



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 21, 1991

Honorable Penny Redington
Ellis County Judge
Ellis County Courthouse
Waxahachie, Texas 75165

OR91-483

Dear Judge Redington:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13503.

You have received a request for "access to the study made by and/or for the Commissioners Court of Ellis County of the salaries for the elected officials of Ellis County," consisting of a survey of salaries in 20 counties of population comparable to Ellis County. Additionally, the request includes "the background information obtained to make a recommendation." You advise us that the requested study has already been made available to the requestor. You claim, however, that Ellis County is not contractually entitled to the requested background information and that this information is not and never has been in the county's possession.

The Open Records Act does not ordinarily require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986); 317 (1982). In some instances, however, the act applies to information collected or maintained by "outside" consultants or contractors. See Open Records Decision No. 462 (1987). *But see* Open Records Decision No. 445. The tests for whether the act applies to information held by outside parties are whether: (1) the information relates to the governmental body's official duties or business; (2) the consultant acts as agent of the governmental body in collecting the information; and (3) the governmental body has or is entitled to access to the information. Open Records Decision No. 462.

The requested information relates to official business of Ellis County, specifically to the "restructure of your accounting department." However, nothing in the file suggests that the consultant acted as an agent of Ellis County in collecting salary information from 20 other counties. You claim, moreover, that Ellis County has never had and is not entitled to access to the requested information. Indeed, the consultant claims that the information acquired during the preparation of the report is proprietary and is not subject to voluntary release to the county or to any other party. Accordingly, the requested information is not subject to required public disclosure under the Open Records Act.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-483.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Enclosures: Open Records Decision No. 462, 445

Ref.: ID#s 13503, 13514, 13708

cc: Ms. Jill M. Higgs
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